THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION NO.24579 of 1997

DATED: 26-09-2006

BETWEEN:

Wali Mohammed,
S/o. Ali Mohammad ... Petitioner

And

The Executive Director,
A.P.S.R.T.C.(H),
Imliban Bus Station, Hyderabad
And seven others ...Respondents

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ORDER:

In the instant writ petition, the petitioner seeks a writ of Mandamus declaring the action of the respondents as illegal and to set aside the proceedings No.I/255 (10)/97-HZ dated 30-08-1997 issued by the first respondent and consequently to direct the respondents to consider the claim of the petitioner for promotion as charge man.

The petitioner has been working as a leading hand in the department having all requisite qualifications and experience. Initially, he was appointed in the Corporation on 02-11-1977 as

a mechanic and since then he worked in various depots like Dilsukhnagar, Barkatpura, Mehdipatnam, Ranigunj, Uppal, Kukatpally and Charminar. He then was promoted as a leading hand on 17-07-1989. His probation was declared on 30-03-1991 and thus he worked in that capacity as leading hand to the satisfaction of his authorities. He then passed the departmental test in Lower Maintenance Management held on 08-12-1991. He was given an appreciation letter for the years 1991-94 by the Depot Manager, Dilsukhnagar Depot for his performance.

The petitioner was elected as Secretary to the Supervisors Association, Hyderabad Zone in the year 1996 and as deligate to National Masdoor Union on account of which the management has been expressing its anguish in various methods indirectly. To the shocking surprise of the petitioner, he received a letter issued by the first respondent containing adverse remarks on all work fronts vide proceedings No. P5/472(3)/97-HZ dated 19-05-1997. The said proceedings were given at the behest of the first respondent as he was against the petitioner's

election as Secretary to the Supervisors Association and as the petitioner has been fighting for the rightful cause of the members of the association. The third respondent also developed grudge against the petitioner. The letter containing adverse remarks has been issued with malafide intention to deprive the petitioner of the opportunity of promotion.

While so, the provisional seniority list was prepared on 01-08-1997 issued by the second respondent and objections were called for in regard there to. In response to the same, the petitioner submitted his objections. Subsequently, an interview was held on 05-08-1997 in which the petitioner performed well. A final selection list dated 30-08-1997 was issued where under the juniors of the petitioner were selected for promotion to the post of mechanical charge man without duly considering the objections dated 01-08-1997 submitted by the petitioner to the provisional seniority list and the personal merit rating record. The established principle of administrative law is to promote the persons with meritorious record of performance during the service. Thus, the impugned selection is devoid of merit and is beset with malafides and has been prepared without looking into the past performance, merit rating record and the objections filed by the petitioner on 01-08-1997.

The first respondent corporation resisted the writ. Respondents have not filed counters. Arguments have been addressed orally on either side.

Admittedly, the petitioner has been working as leading hand and has considerable experience as a leading hand. A provisional list was prepared by the Department against which, the applicant submitted his objections on 01-08-1997. On his own showing the first respondent issued a memo containing adverse remarks against the petitioner. That stares on his face and has not been assailed before any appropriate authority. As per the contention of the petitioner, he is suitable to be promoted as mechanical charge man. He is assailing the merit list prepared by the Department after conducting such an interview solely on the basis of the list, which is beset with malafides. Be that as it may, the regulation relevant to the appointment to the post of mechanical charge man shows two channels, one by means of direct recruitment and the other by means of promotion. Thus two sources are provided. As can be seen from annexure ‘A’ appended to the Employee (Recruitment) Regulations, 1966, it contains several sections. Section ‘C’ Class - II Services pertains to the post of Mechanical Engineering Department. Serial No.3 therein relates to mechanical charge man. This table shows the method of recruitment and the qualifications required for that post. The sources from which the mechanical charge man shall be appointed as per serial No.3 or 2.

As discussed hereinabove, it is by direct recruitment as well as promotion. The method of recruitment and qualifications as shown against serial No.3 may be extracted here under for brevity and better understanding. It reads as under:

Sl. No.3	To be filled alternatively by appointment of 'A'-Gr, Apprentice, who has successfully completed his training, and by promotion of a suitable LEADING HAND. If suitable candidate is not available in the particular category for filling up a vacancy reserved for that category, the vacancy may be filled by a suitable candidate from the other category or by direct recruitment.	**For Promotion** The Leading Hand must have completed his probation satisfactory and must have had previous experience and or knowledge of work in the Section, in which the vacancy exists. **For Direct Recruitment:** a) must be in possession of a Diploma in L.M.E., or L.A.E. from a Government Polytechnic or any other recognized institution; b) must have served at least for three years in a workshop, engaged in the manufacture and assembly or the repairs, over-haul and maintenance of commercial transport vehicles; and c) must not be below 28 years and above 40 years of age on 1st July of the year, in which the recruitment is made.

From a perusal of the excerpted provision, it shows that it contemplates a promotion from the post of leading hand to mechanical charge man. But, obviously, the promotion is not purely on the basis of seniority. The language used in second column pertaining to method of recruitment shows that promotion by means of a suitable leading hand. The expression 'suitable' is of significance having regard to the context in this case. At any rate, it is not by virtue of pure seniority that a person can be promoted from leading hand to mechanical charge man. Apart from the seniority, the regulation reads that he must be suitable. Learned counsel for the petitioner represents that there are no adverse remarks against the petitioner and he is suitable in all respects and his seniority has not been considered and on the other hand, it has been ignored. On his own showing, he received an adverse remark from the first respondent which has not been assailed. It may be stated here that the petitioner is not challenging the process of selection that is the method and methodology. In the instant case, to test the suitability of various persons, who have been working in the Department as leading hands, apart from their personal records, an interview has been conducted. Conduct of interview has not been assailed on any ground that it shall not be the

criteria. In the process, the Department prepared a merit list. A perusal of the merit list made available to me by the learned standing counsel for the Corporation shows that apart from the petitioner herein, some of his seniors and several of his juniors have been ignored with the necessary remark made qua their names in the list as "Not come up to the standard. Hence not selected." It may be reiterated here that the petitioner assails the list solely on the premise that his juniors were selected ignoring him. When some of his seniors have not been considered, it is not open to the petitioner to contend before this Court that his juniors have been selected ignoring him. No discrimination can be seen legitimately in that regard. It is the assertion of the petitioner that he performed well in the interview. But all his contentions are against the merit list prepared by the Department. It has not been shown before me convincingly that there is element of malafides that has crept in the selection process. The very basis that the juniors of the petitioner have been selected ignoring his seniority has no legs to stand having regard to the fact that some of the seniors of the petitioner even have not been considered with the same remark. The remark as 'not come up to the standards, hence not selected' has been uniformly made against the names of all the candidates in the selection list and out of them, some are seniors and some are juniors to the petitioner. Having regard to the above state of affairs, it is very difficult for this Court to come to a definite conclusion that the process of selection is hit by any malafides. Malafides although alleged have not been brought home convincingly in this case.

Above all, as can be seen from the representation made by the learned counsel that the petitioner has retired from service due to superannuation pending the writ. I am afraid, he can legitimately contend before this Court that he is entitled to all the benefits of the post of mechanical charge man.

In my considered view, the writ petition becomes infructuous when once he has retired from the service during the pendency of the writ petition.

For the above reasons, the writ petition must fail and is dismissed. But under the circumstances, no order as to costs.

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T.CH. SURYA RAO, J.

Dated: 26..09..2006.
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